

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

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CRYOVAC, INC.,

Plaintiff,

v.

PECHINEY PLASTIC PACKAGING INC.,

Defendant.

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) Civil Action No.: 04-1278-KAJ  
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**PLAINTIFF'S MOTION FOR LEAVE TO FILE AMENDED COMPLAINT**

Pursuant to Federal Rule of Civil Procedure 15(a), plaintiff Cryovac, Inc. ("Cryovac") hereby moves for leave to file an Amended Complaint. As required by District Court of Delaware Local Rule 15.1, two copies of the proposed Amended Complaint are attached as Exhibits 1 and 2 to this motion. In addition, a black line copy of the Amended Complaint showing the changes is attached as Exhibit 3.

Cryovac waives its opening brief and states as follows in support of its motion:

1. Plaintiff, Cryovac filed this action for patent infringement on September 20, 2004 against Pechiney Plastic Packaging Inc. ("Pechiney").
2. On November 9, 2004 Pechiney filed its Answer and Counterclaims to Cryovac's Complaint.
3. Cryovac replied to Pechiney's counterclaims on November 29, 2004.
4. The Scheduling Order sets the discovery cut-off in this case for August 19, 2005 and trial is set to begin on June 19, 2006. (D.I. 22). To date, the parties have exchanged and

responded to an initial round of written discovery. No documents have been produced and no depositions have been noticed or taken.

5. Rule 15(a) of the Federal Rules of Civil Procedure states that leave to amend pleadings “shall be freely given when justice so requires.” As the Third Circuit has made clear, “it is an abuse of discretion to deny leave to amend unless plaintiff’s delay in seeking amendment is undue, made in bad faith, [or] prejudicial to the opposing party.” Alvin v. Suzuki, 227 F.3d 107, 121 (3d Cir. 2000) (internal quotation omitted).

6. Cryovac’s initial complaint set forth one count for patent infringement. The proposed amended complaint (Exhs. 1-2) alleges two new counts: (1) that Pechiney tortiously interfered with a contract between Cryovac and National Beef; and (2) that Pechiney tortiously interfered with prospective contractual relations between Cryovac and National Beef.

7. Cryovac has not unduly delayed in asserting its claims for tortious interference with contract and tortious interference with prospective contractual relations. This case has been pending for less than six months. It is still extremely early in the discovery process and there have been no case dispositive motions or other substantive issues presented to the court at this time.

8. Cryovac’s proposed amendment will not prejudice Pechiney because this case is still in its early stages. A trial date is not set until June 19, 2006 — over fifteen months from the filing of this motion. Additionally, only a small amount of discovery has taken place, and it has been limited to the parties’ first set of discovery requests and initial disclosures. On March 4, 2005 the parties exchanged written responses to the discovery requests. Depositions have not been noticed by either party as of the date of this motion and the discovery cut-off is not until August 19, 2005. Pechiney will have ample time to prepare its defenses to these claims.

Therefore, Pechiney will not be unduly burdened or prejudiced as a result of amending the Complaint.

9. Pursuant to Local Rule 7.1.1, counsel for Cryovac has conferred with counsel for Pechiney. Pechiney does not consent to this amendment.

WHEREFORE, Cryovac respectfully requests that this Court:

- (i) Grant Cryovac's Motion for Leave to File Amended Complaint; and
- (ii) Deem Cryovac's Amended Complaint, attached hereto, as having been filed and served as of the date of this Court's decision to allow Cryovac's Motion.

A proposed Order is attached.

Dated: March 15, 2005

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	)	
Defendant.	)	
_____	)	

**ORDER**

At Wilmington this \_\_\_\_\_ day of March, 2005, having considered Cryovac, Inc.'s motion to amend its complaint and finding that there is no prejudice in granting leave to amend to Cryovac, Inc., IT IS HEREBY ORDERED that:

- (i) Cryovac's Motion for Leave to File Amended Complaint is granted.
- (ii) Cryovac's proposed Amended Complaint, in the form attached as Exhibit A to its motion, shall be deemed filed and served as of the date of this Order.

\_\_\_\_\_  
United States District Judge

**CERTIFICATE OF SERVICE**

I hereby certify that on March 15, 2005, I caused to be electronically filed a true and correct copy of the foregoing document with the Clerk of the Court using CM/ECF, which will send notification that such filing is available for viewing and downloading to the following counsel of record:

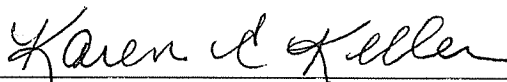
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I further certify that on March 15, 2005, I caused a copy of the foregoing document to be served by hand delivery on the above-listed counsel of record and on the following non-registered participants in the manner indicated.

**BY FEDERAL EXPRESS**

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